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UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,273	12/11/2000	Thomas C. Harrop	50671-P018US-10013652	5508

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EXAMINER
NGUYEN, DUSTIN

ART UNIT	PAPER NUMBER
2154	

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/734,273	HARROP, THOMAS C.
	Examiner	Art Unit	
	Dustin Nguyen	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>29 August 2005</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-16 and 18-36* is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,6-16 and 18-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *34-36* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-4, 6-16, 18-36 are presented for examination.

Election/Restrictions

2.   Restriction to one of the following inventions is required under 35 U.S.C. 121:

I.   Claims 1-4, 6-16, 18-33, drawn to network resource allocating, classified in class

709, subclass 226.

II.   Claims 34-36, drawn to computer network monitoring, classified in class 709,

subclass 224.

3.   Inventions I and II are related as subcombinations disclosed as usable together in a single

combination. The subcombinations are distinct from each other if they are shown to be

separately usable. In the instant case, invention I has separate utility such as allocating or

predicting hardware resource for future level of availability hardware resource based on the

obtained historical data; and invention II has separate utility such as gateway for polling

parameters according to polling interval for correcting resource problem. See MPEP §

806.05(d).

4.   Because these inventions are distinct for the reasons given above and have acquired a

separate status in the art as shown by their different classification, restriction for examination

purposes as indicated is proper.

5.   Because these inventions are distinct for the reasons given above and the search required

for Group I is not required for Group II, restriction for examination purposes as indicated is

proper.

6.   Newly submitted claims 34-36 are directed to an invention that is independent or distinct

from the invention originally claimed for the following reasons: see above.

Since applicant has received an action on the merits for the originally presented

invention, this invention has been constructively elected by original presentation for prosecution

on the merits. Accordingly, claims 34-36 are withdrawn from consideration as being directed to

a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

8.   Claims 1-4, 7-16, 18, 19, 21-33 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Liang [US Patent No 6,738,811], in view of Sampath et al. [US Patent No 6,892,317].

9.   As per claim 1, Liang discloses the invention substantially as claimed including the

method of automatically allocating additional hardware resources to a computer having a

plurality of hardware resources, said method comprising:

monitoring use of selected ones of the hardware resources by the computer to obtain

historical data pertaining to the historical availability to the computer of each of the monitored

hardware resources [i.e. monitoring computer components and keep history for each of the

parameters being monitored] [Abstract; col 2, lines 21-32; and col 9, lines 28-38];

automatically analyzing, according to an analysis technique specific to each selected one

of the hardware resources [i.e. plurality of parameters for each component being monitored] [

304, Figure 3; and col 6, lines 15-30], the obtained historical data to arrive at a prediction of a

future level of availability of a monitored hardware resource [i.e. analyzing the historic data to

find out the trend from which a remaining time to a breakdown may be estimated] [col 2, lines

41-49; and col 8, lines 35-39]; and

providing a signal when the prediction of the future level of availability of the monitored

hardware resource fails to meet an availability threshold [i.e. notification signal in abnormal

condition when measured value is out of predefined range] [col 7, lines 37-46; col 8, lines 31-

48; and col 9, lines 59-67];

automatically updating the analysis technique based on said signal [i.e. automatically

consolidated data] [Figure 4B; col 7, lines 20-36; and col 8, lines 45-48];

without user intervention, responding to the signal by automatically reserving or ordering

an additional physical hardware resource that is not in the computer when the signal is provided [

i.e. ordering of replacement part] [col 5, lines 31-39; col 7, lines 52-65; and col 8, lines 41-45].

Liang does not specifically disclose

which is to be later manually physically added to the computer after the reserving or

placing of an order.

Sampath discloses

which is to be later manually physically added to the computer after the reserving or

placing of an order [i.e. service require specialized technician] [col 7, lines 54-60; and col 8,

lines 48-60].

It would have been obvious to a person skill in the art at the time the invention was made

to combine the teaching of Liang and Sampath because Sampath' teaching of manually adding of

hardware resource would allow to resolve any complication of configuration of installation.

10.   As per claim 2, Liang discloses performing at least one calculation with respect to certain

of the obtained historical data [i.e. calculation based on a number of mathematical scheme] [col

7, lines 42-46].

11.   As per claim 3, Liang discloses wherein said step of responding to the signal by

automatically reserving or ordering occurs when the prediction indicates that the resources are

below the availability threshold [col 8, lines 31-41].

12.   As per claim 4, Liang does not specifically disclose without user intervention, enabling

the reduction of the monitored hardware resources when the prediction indicates that the

monitored hardware resources will not be required. Sampath discloses without user intervention,

enabling the reduction of the monitored hardware resources when the prediction indicates that

the monitored hardware resources will not be required [col 3, lines 50-61]. It would have been

obvious to a person skill in the art at the time the invention was made to combine the teaching of

Liang and Sampath because Sampath's teaching of reducing hardware resource would allow to

eliminate unnecessary resource in the monitoring process to reduce overhead and increase

system performance.

13.   As per claim 7, Liang discloses analyzing available applications with respect to the

utilization by the available applications of the monitored hardware resources [i.e. monitoring

plurality of applications, programs] [col 5, lines 11-30].

14.   As per claim 8, Liang discloses the monitored hardware resources are selected from the

set of resources, including memory, CPU, disk, available ports, and network resources [col 2,

lines 38-42].

15.   As per claim 9, it is rejected for similar reasons as stated above in claim 1.

16.   As per claim 10, it is rejected for similar reason as stated above in claim 2.

17.   As per claims 11 and 12, Liang does not specifically disclose adding the hardware

resources to said computer from a remote location and removing the hardware resources from

said computer. Sampath discloses adding the hardware resources to said computer from a

remote location and removing the hardware resources from said computer [i.e. control command

for re-configuration hardware] [col 9, lines 36-54]. It would have been obvious to a person

skill in the art at the time the invention was made to combine the teaching of Liang and Sampath

because Sampath's teaching of reconfiguration hardware would allow to balance the workload of

the resources.

18.   As per claim 13, Liang discloses storing historical data on resource usage [i.e. data table

] [Figures 4A-C and 6; and col 6, lines col 7, lines 20-36; and col 8, lines 12-20].

19.   As per claim 14, it is rejected for similar reason as stated above in claim 7.

20.   As per claims 15 and 16, they are apparatus claimed of claims 1, 2, they are rejected for

similar reasons as stated above in claims 1, 2.

21.   As per claims 18, 19, 21 and 22, they are apparatus claimed of claims 4, 13, 7 and 8, they

are rejected for similar reasons as stated above in claims 4, 13, 7 and 8.

22.   As per claims 23-28, they are apparatus claimed of claims 9-14, they are rejected for

similar reasons as stated above in claims 9-14.

23.   As per claims 29-33, they are program product claimed of claims 9-13, they are rejected

for similar reasons as stated above in claims 9-13.

24.   Claims 6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liang [

US Patent No 6,738,811], in view of Sampath et al. [US Patent No 6,892,317], and further in

view of Johnson et al. [US Patent No 2003/0237016].

25.   As per claim 6, Liang and Sampath do not specifically disclose the signal is in graphical

form for each of the monitored hardware resources. Johnson discloses the signal is in graphical

form for each of the monitored hardware resources [i.e. GUI] [paragraph 0096 and 0106]. It

would have been obvious to a person skill in the art at the time the invention was made to

combine the teaching of Liang, Sampath and Johnson because Johnson's teaching of graphical

interface would allow to managing monitored hardware resources in a quick and convenience

manner.

26.   As per claim 20, it is rejected for similar reasons as stated above in claim 6.

27.   Applicant's arguments with respect to claims 1-4, 6-16, 18-33 have been considered but

are moot in view of the new ground(s) of rejection.

28.   Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Dustin Nguyen whose telephone number is (571) 272-3971. The

examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Follansbee John can be reached on (571) 272-3968. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dustin Nguyen
Examiner
Art Unit 2154

SBEE
EXAMINER
CENTER 2100